

DEBTOR

## Chapter 7

Case No. 13-40678-MSH

**TRUSTEE'S MOTION FOR AUTHORITY TO SELL PERSONAL PROPERTY FREE  
AND CLEAR OF LIENS AND ENCUMBRANCES**

To the Honorable Melvin J. Hoffman, Bankruptcy Judge:

Now comes Gary M. Weiner, Trustee in the above Chapter 7 case, by and through his counsel, Weiner Law Firm, P.C., and hereby moves, pursuant to 11 U.S.C. § 363 (b) and (f) and Bankruptcy Rule 6004©, respectfully for authority to sell by public auction 6 vehicles owned or controlled by the Debtor, as well as office equipment and furniture, various tools and equipment and assorted inventory, free and clear of all liens, encumbrances and claims of every kind and description, as is more fully described herein. A corresponding Notice of Intended Public Sale of Personal Property is to this Motion as Exhibit "A". As grounds, therefore, the Trustee respectfully represents the following:

1. On March 22, 2013, D and R Roofing Co., Inc. ("Debtor"), filed a voluntary Petition under Chapter 11 of the United States Bankruptcy Code.
2. On or about April 15, 2013 Gary M. Weiner ("Trustee") accepted the appointment as the Chapter 11 Trustee for the above captioned matter.
3. On or about November 6, 2014, this matter was converted to a proceeding under Chapter 7 of the United States Bankruptcy Code.
4. On or about November 7, 2014, the Applicant was appointed as the Chapter 7 Trustee in this case and is the duly appointed, qualified and acting Trustee in Bankruptcy in the above entitled proceedings.

5. The matters set forth herein constitute core proceedings pursuant to 28 U.S.C. § 157 (b)(2) (A) and (N).
6. Among the assets of the bankruptcy estate are the following Vehicles: Vehicle One: a 2000 Ford 350 Super Duty Crew Cab Truck with 274,500 miles; Vehicle Two: a 2006 Ford F150 Super Cab Truck with 197,400 miles; Vehicle Three: a 2007 Ford F150 Super Cab Truck with 187,100 miles; Vehicle Four: a 2009 Chevy Express 1500 Cargo Van with 106,500 miles; Vehicle Five: a 2009 Chevy Express 1500 Cargo Van with 97,100 miles; and Vehicle Six: a 2009 Chevy Express 1500 Cargo Van with 97,400 miles. All miles are as of the date of filing the bankruptcy petition.
7. In addition, the Debtor has listed office equipment and furniture valued at \$1,000.00, tools and equipment valued at \$89,920.00 and inventory valued at \$2,262.67 (collectively referred to as "personal property").
8. The Trustee seeks the authority to sell the Vehicles and personal property by public sale. The Trustee seeks authority to sell the Vehicles and personal property free and clear of all liens, encumbrances, claims, charges and administrative holds, including, but not limited to, any liens that may exist in favor of taxing authorities, including the United States Department of the Treasury, Internal Revenue Service, Commonwealth of Massachusetts and local taxing authorities.
9. Upon information and belief, the following liens and encumbrances exist:
  - A. A blanket security agreement on all assets of the debtor executed with Fidelity Co-operative Bank on or about December 13, 2004 with an approximate balance of \$90,000.00.
  - B. A lien to St. Mary's Credit Union in the approximate amount of \$11,126.32 and secured by Vehicle No. Five as described in Paragraph No. 6;
  - C. A lien to St. Mary's Credit Union in the approximate amount of \$12,387.33 and secured by Vehicle No. Six as described in Paragraph No. 6; and

- D. A lien to St. Mary's Credit Union in the approximate amount of \$13,223.19 and secured by Vehicle No. Four as described in Paragraph No. 6;
10. Fidelity Co-operative Bank ("Fidelity") modified the terms of its loan with the Debtor on or about February 24, 2012.
  11. Pursuant to the cash collateral order entered by this Court on May 9, 2013, the Debtor was required to pay Fidelity \$750.00 plus continuing interest on a monthly basis. Schedule D of the Debtor's petition listed an outstanding obligation to Fidelity at \$95,110.40 as of the date of the filing of the petition.
  12. Fidelity in order to perfect its security interest, filed a UCC-1 financing statement with the Secretary of State for the Commonwealth of Massachusetts on January 10, 2005 and a UCC-3 continuation statement was filed on October 23, 2009. On or about October 2, 2014 the UCC financing statement lapsed and no further continuation statement is on record. It is the Trustee's contention that Fidelity's security interest has now lapsed.
  13. The personal property is presently located at the Debtor's former place of business 116 Davis Street, Douglas, Massachusetts. This real property is owned by Will Realty Corporation a company owned by Richard Ezold, Sr. the president and sole shareholder of the Debtor.
  14. Upon information and belief, Will Realty is marketing 116 Davis Street property for sale.
  15. The Trustee believes that it is in the best interest of the estate for the Vehicles and personal property to be sold at public auction because it is an efficient and economical way to bring additional funds into the estate and provide for a dividend to creditors.
  16. On November 20, 2014, the Trustee filed the Application to Employ Aaron Posnik & Co., Inc. as an auctioneer for the estate.
  17. The Trustee anticipates that the public auction for the sale of the Vehicles and personal property will take place on **Thursday January 15, 2015 at 11:00 a.m. at 116 Davis Street, Douglas, Massachusetts 01516.**

WHEREFORE, the Trustee respectfully requests:

1. That this Court authorize the Trustee's motion for public sale of the Vehicles and personal property as described in paragraph 4, herein free and clear of all liens, interests and encumbrances, pursuant to 11 U.S.C. § 363 (b) and (f);
2. That the Trustee be authorized to execute such documents as are reasonably necessary to complete the sale;
3. That any encumbrances shall attach to the proceeds of the sale, to the extent that they are valid and perfected, in the same priority as they are entitled to under applicable law;
4. For such further relief as this Court deems just and proper.

/s/ Gary M. Weiner, Esq.  
Gary M. Weiner, Esq., BBO # 548341  
WEINER LAW FIRM, P.C.  
95 State Street, Suite 918  
Springfield, MA 01103  
Tel. No. (413) 732-6840  
GWeiner@weinerlegal.com  
Date: November 21, 2014

## CERTIFICATE OF SERVICE

I, Gary M. Weiner, Esq. do hereby certify that on the 21<sup>st</sup> day of November, 2014, a copy of the Trustee's Motion for Authority to Sell Personal Property Free and Clear of Liens and Encumbrances and Notice of Intended Public Sale was mailed via first class mail, postage pre-paid, or via electronic mail to the following and to all parties on the attached List of Creditors:

Richard King, United States Trustee  
USTPRegion01.WO.ECF@USDOJ.GOV

Debtor

D and R Roofing Co., Inc.  
116 Davis Street  
Douglas, MA 01516

### Debtor's Counsel

Robert Osol  
Melia & Osol  
16 Harvard Street  
Worcester, MA 01609

## Interested Parties

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Silverman & Esposito  
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Ricoh USA  
Recovery & Bankruptcy Group  
3920 Arkwright Road, Suite 400  
Macon, GA 31210

Counsel to Forest Properties Management, Inc.  
Scott D. Carman, Esq.  
Shaevel & Krems, LLP  
141 Tremont St.,  
Boston, MA 01824

Richard J. Ezold, Sr.  
Linda Ezold  
175 Stone School Road  
Sutton, MA 01590

Aaron Posnik & Co., Inc.  
83 State Street  
Springfield, MA 01103

/s/ Gary M. Weiner, Esq.

D and R Roofing Co., Inc.  
13-40678  
LIST OF CREDITORS

Atlantic Asphalt Co., Inc.  
146 Railroad Street  
Revere, MA 02151

Waste Removal Services  
3 Alicia Road  
Framingham, MA 01701

Liberty Mutual Insurance Group  
PO Box 7247-0109  
Philadelphia, PA 19170-0109

New Castle Building Products  
535 Old Tarrytown Road  
White Plains, NY 10603

Supermedia  
PO Box 619009  
DFW Airport  
Dallas, TX 75261

Home Depot Credit Services  
PO Box 183175  
Columbus OH 43218-3175

Blue Cross Blue Shield MA  
PO Box 371318  
Pittsburgh, PA 15250

Capital One  
PO Box 70884  
Charlotte, NC 28272

Linda M. Smith, CPA, PC  
80 Flanders Rd Suite 200  
Westborough, MA 01581

C & S Lumber  
124 Main Street  
Millbury, MA 01527

Crane & Rigging Services LLC  
795 Plymouth Street  
Holbrook, MA 02343

Genflex Roofing Systems  
PO Box 730096  
Dallas, TX 75373

Regen  
PO Box 3192  
Worcester, MA 01613

Town of Douglas  
29 Depot Street  
Douglas, MA 01516

Koopman Lumber & Hardware  
665 Church Street  
Whitinsville, MA 01588

Yost Manufacturing & Supply, Inc.  
PO Box 263  
Waterford, CT 06385

Capital Waste Services, Inc.  
1222 Bennington Street  
Boston, MA 02128

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

Massachusetts Dept of Revenue  
Bankruptcy Unit  
PO Box 9564  
Boston, MA 02114-9564

A T & T  
PO Box 6463  
Carol Stream, IL 60197

Beacon Sales Co.  
50 Webster Avenue  
Somerville, MA 02143



Better Business Bureau  
340 Main St. Suite 802  
Worcester, MA 01608

Charter Communications  
PO Box 60187  
Los Angeles, CA 90060

Crystal Rock, LLC  
1050 Buckingham Street  
Watertown CT 06795-1631

DNS Services  
6400 NE Hwy 99  
Suite 6 - 291  
Vancouver, WA 98662

Eric B. Goldberg, Esq.  
Wilchins Cosentino & Friend  
20 Williams St. Suite 130  
Wellesley Hills, MA 02481

Federal Express  
PO Box 371461  
Pittsburgh, PA 15250

Fidelity Bank  
9 Leominster Connector  
Leominster, MA 01453

Fidelity Co-Operative Bank  
Attn: Bankruptcy  
675 Main Street  
Fitchburg, MA 01420

George McCarthy  
2 Summer Street Suite 5  
Natick, MA 01760-4529

Harvey Industries  
PO Box 3894  
Boston, MA 02241-3894

Hilti  
PO Box 382002  
Pittsburgh, PA 15250-8002

Insul-Mart, LLC  
PO Box 2676  
Mechanicsville, VA 23116

Integra Network Services  
425 Fortune Blvd. Suite 202  
Milford, MA 01757

Jack Moore  
250 Barber Avenue  
Worcester, MA 01606

John DelPrete, Jr.  
161 Worcester Road  
Framingham, MA 01701

Kevin J. Coderre  
165 Stone School Road  
Sutton, MA 01590

Landscape Depot Inc.  
PO Box 64  
203 Providence Turnpike  
Sutton, MA 01590

Linders, Inc.  
211 Granite Street  
Worcester, Ma 01607

NRCA  
PO Box 809261  
Chicago, IL 60680

NU-England Services Co., Inc.  
190 Worcester Turnpike  
Sutton, MA 01590

National Grid  
Bankruptcy Dept.  
PO Box 960  
Northborough, MA 01532-0960

Paychex  
Attn: Bankruptcy  
27 Midstate Drive #200  
Auburn, MA 01501

Principal Life Group  
Grand Island  
PO Box 14513  
Des Moines, IA 50306

Ray's True Value  
22 Howe Avenue  
Millbury, MA 01527

Ritchie & Sons, Inc.  
195 Ballardvale St.  
Wilmington, MA 01887-1092

Speedy Call Center  
23 Midstate Drive  
Auburn, MA 01501

Staples Credit  
PO Box 9020  
Des Moines, IA 50368

Terminix Processing Center  
PO Box 742592  
Cincinnati OH 45274-2592

Travelers  
CL Remittance Center  
PO Box 660307  
Dallas, TX 75266

Ullman Printing  
PO Box 711  
Millbury, MA 01527

United Site Services  
PO Box 5502  
Binghamton, NY 13902

Revenue Enforcement Division  
Div of Unemployment Assistance  
19 Staniford St.  
Boston, MA 02114

EZ Pass MA  
PO Box 632  
Auburn, MA 01501

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Worcester, MA 01604

Occupational Health & Safety Admin  
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Springfield, MA 01103

Broadway  
PO Box 66486  
Chicago, IL 60666

James River Insurance Co  
PO Box 27648  
Richmond VA 23261-7648

Ranfac Corp.  
30 Doherty Avenue  
Avon, MA 02322

Redi Rubbish  
13 St. John Road  
Worcester, MA 01603

Shell Fleet Plus  
Processing Center  
PO Box 183019  
Columbus OH 43218

SW Debs LLC  
503 Fabyan Road  
N Grosvenordale CT 06255  
c/o Peter Calabrese, Esq.

Travelers Property  
c/o Thomas Niarchos, Esq.  
100 Summer St. Suite 201  
Boston MA 02110

UVR  
55 Eagle Drive  
Dudley, MA 01571

Robert Amaral  
Amy Amaral  
403 N. E. Main St.  
Douglas, MA 01516